IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 622 OF 2002

Abdul Raheman Haji Nazir Ahmed. ...Petitioner
V/s.
Hafiz Khalil Mohd.Shaban & Ors. ...Respondents

Shri Anilkumar Patil for Petitioner.
Shri A.R. Shaikh for Respondents No.1 to 5.
Shri S.Y. Shinde, APP for the State.

CORAM : V.M. KANADE, J.

DATED : APRIL 13, 2006

P.C. :-

. Heard learned Counsel for the petitioner, learned Counsel for the respondent and learned APP for the State.

. By this writ petition, the petitioner is challenging the order passed by the Additional Sessions Judge, Malegaon, whereby the revision application filed by the accused challenging the order passed by the Magistrate permitting re-investigation under Section 173(8) was set aside. The petitioner who is the original complainant being aggrieved by the said order has preferred this writ petition under Article 227 of the Constitution of India.

2. A preliminary objection is raised by the learned Counsel appearing on behalf of the respondent-original accused regarding the maintainability of the petition on behalf of the original complainant. It is submitted that since the State has chosen not to challenge the said order, the complainant has no locus to challenge it in this Court by filing the writ petition under Article 227 of the Constitution of India.

3. In my view, there is some substance in the submission made by the learned Counsel for the respondent. The writ petition under Article 277, in my view, therefore, is not maintainable and therefore, is liable to be dismissed. However, it is clarified and the petitioner if he so desires, he is liberty to file a writ petition under Article 226 of the Constitution of India seeking appropriate relief by seeking writ or mandamus for directing the Investigating Officer to reinvestigate the case.

. With these observations, the writ petition is disposed of.

(V.M. Kanade, J.)